



**CITY CHARTER**  
**of**  
**THE CITY OF GRANTS, NEW MEXICO**

## **PREAMBLE**

We, the citizens of the City of Grants, pursuant to the Constitution and laws of the State of New Mexico<sup>1</sup>, in order to secure the advantages of local self government, do hereby enact this Charter for the City of Grants, New Mexico.

Not more than three (3) days following the election and subsequent approval by the voters of the Amended/Revised Charter, the City Clerk shall canvass the ballots. At the next regular meeting of the City Council, the Council shall certify the election returns and thereby adopt the Amended/Revised Charter, which shall become effective thirty (30) days after the election.

## **Article I GENERAL PROVISIONS AND POWERS; CONSTRUCTION**

### **Section 1.01. Municipal Corporation; Purpose.**

- A. Pursuant to Section 3-15-8 NMSA 1978, the municipal corporation now existing and known as the City of Grants shall remain and continue to be a municipal corporation with the same name and boundaries as existed prior to the effective date of this Charter. The boundaries of the City may be extended as provided by law.
- B. The purpose of this Charter is to provide for maximum self government and the greatest possible exercise of home rule powers. In no case shall the City have any less powers than a non-charter municipality in the State of New Mexico.

### **Section 1.02. Powers of the City.**

- A. Acceptance of Devolution of Powers<sup>2</sup>. By enacting this Charter, pursuant to the provisions of Article X, Section 6 of the New Mexico Constitution, and pursuant to the Municipal Charter Act, the City of Grants does accept the full and complete devolution of home rule powers granted in the Constitution and laws of the State of New Mexico to all municipalities which adopt a charter. Accordingly, the City shall have all powers possible for a home rule municipality to possess under the Constitution and laws of the State of New Mexico, including but not limited to all implied powers and all powers necessary to implement all express powers of the City, as if each and every one of the City's implied powers were fully, completely, and expressly enumerated in this Charter.
- B. Charter as Limitation on Powers. As the New Mexico Constitution and Municipal Charter Act devolve full home rule powers directly on municipalities which enact a charter, this Charter shall be construed as a limitation on powers and not as a grant of powers. The fact that this Charter shall enumerate for convenience or reference some of the powers of the City shall not change the nature of the Charter from a limitation on powers to a grant of powers, or give rise to any inference that the City lacks any power which is not specifically enumerated. If a power of the City is not affirmatively state herein, no presumption or inference shall be created that the City lacks such a power.

- C. Liberal Construction. The powers of the City<sup>3</sup> under this Charter shall be construed liberally in favor of the City, and shall be interpreted to favor maximum local self government.
- D. Powers of General Law Municipal Corporations. The City shall be entitled to exercise any and all powers granted by law or the Constitution to municipal corporations, except to the extent that there may be a conflict with this Charter; in which case the Charter shall operate to limit the City's ability to exercise such a power.

### **Section 1.03. Intergovernmental Relations.**

In addition to those powers granted pursuant to the New Mexico Joint Powers Agreements Act,<sup>4</sup> the City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states, or any state civil division or agency, or the United States or any of its agencies.

### **Section 1.04. State and Municipal Laws.**

- A. All City ordinances, resolutions, orders and regulations which are in force when this Charter becomes fully effective are repealed only to the extent that they are inconsistent with or interfere with the effective operation of the Charter.
- B. To the extent that the Constitution and laws of the State of New Mexico permit, all laws relating to or affecting the City or its agencies, officers or employees, which are in force when this Charter becomes fully effective, are superseded to the extent that they are inconsistent or interfere with the effective operation of the Charter.
- C. In addition to the provisions of Subsections A and B of this section, and pursuant to Section 3-15-13 NMSA 1978, any provision of the Municipal Code Chapter 3, NMSA 1978 or any other state law relating to municipalities shall apply to the City only to the extent that such a state statute is not inconsistent with the provisions of this Charter. To the extent that any state statute relating to municipalities is consistent with this Charter, the City may avail itself of the rights, privileges and powers conferred by such a statute, regardless of whether such a statute vests powers in home rule municipalities, non-home rule municipalities, or both.

### **Section 1.05. Rights and Property.**

- A. All rights and property which were vested in the City prior to the effective date of this Charter shall remain so vested under the Charter. No existing right or liability and no pending litigation shall be affected by adoption of this Charter. No action or proceeding, civil or criminal, pending at the time that this Charter takes effect, shall be affected or abated by operation of this Charter.
- B. All contracts and franchises entered into by the City or for its benefit, prior to the effective date of this Charter, shall remain in full force and effect. Public improvements for which legislative action has been taken under laws, ordinances or resolutions existing at the time this Charter takes effect, may be carried to completion in a manner which is

in as full compliance with this Charter as is possible in accordance with the provisions of existing laws, ordinances and resolutions.

**Section 1.06. Construction.**

- A. Headings. Section and subsection headings are included for convenience only. Such headings shall not be utilized for the purpose of determining the meaning of the Charter.
- B. Terms. Unless the context otherwise requires: the singular shall include the plural; the plural shall include the singular; male shall include female; female shall include male; "may," "can," and "should" shall be permissive; "must," "shall," and "will" shall be mandatory; "or" shall be disjunctive; and "and" shall be conjunctive.
- C. Severability. The provisions of this Charter are severable. If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

**Section 1.07. Charter Amendment.**

This charter shall be amended according to the process and requirements established in the Municipal Charter Act of the New Mexico Municipal Code, Chapter 3, Article 15 NMSA 1978.<sup>5</sup>

## **Article II GOVERNING BODY**

**Section 2.01. Corporate Authority; Composition; General Powers.**

- A. The corporate authority of the City shall be vested in the governing body, which shall consist of four (4) City Councilors, who shall comprise the City Council and the Mayor who shall be the presiding officer of the governing body.
- B. All powers of the City shall be vested in the governing body, except as otherwise provided by law or this Charter, and the governing body shall provide for the exercise thereof.
- C. The members of the governing body, that is the Mayor and City Councilors, are charged with the responsibility for implementing the Charter, monitoring compliance with the Charter, and remaining alert for any action which may be inconsistent or non-compliant with the provisions of the Charter.

**Section 2.02. Election; Residency; Terms.**

- A. Election. One (1) City Councilor shall be elected by the qualified electors in each of four (4) City Council districts. The Mayor shall be elected at-large. A person shall be eligible and qualified to be a candidate for the office of Mayor or City Councilor, if that person

meets all requirements of the Constitution and laws of the State of New Mexico and all requirements of this Charter.<sup>6</sup>

- B. Residency. A person shall not be eligible to be a candidate for the office of Mayor unless that person is a resident of the City on and after the date upon which a declaration of candidacy is filed. A person shall not be eligible to be a candidate for the office of City Councilor unless that person is a resident of the district on and after the date upon which a declaration of candidacy is filed. The Mayor must continue to reside in the City and Councilors must continue to reside in their district throughout their terms.  
(Amended at Regular Municipal election, March 1, 2016)
- C. Terms. The Mayor and City Councilors shall each be elected for a term of four (4) years. The terms of office for City Councilors shall be staggered with two of the four positions elected every two years. The Mayor and each City Councilor shall remain in office until that person's successor is qualified.
- D. Term Limitation. The Mayor, after having served two (2) consecutive elected terms in the office of Mayor, shall be ineligible to seek that office through election until one (1) full term has intervened. The City Councilor, after having served two (2) consecutive elected terms in the office of City Councilor, shall be ineligible to seek that office through election until one (1) full term has intervened.<sup>7</sup>
- E. Term Limitation and Vacancies in Office.<sup>8</sup> An appointment to fill a vacancy in the office of Mayor or City Councilor shall not be counted under Subsection D of this section and shall not prevent the appointee from:
  - (1) seeking election to that same office for two additional subsequent consecutive terms;
  - (2) being appointed to fill the same office after holding that office for the two immediate preceding terms.

### **Section 2.03. Council Districts.**

- A. Following each decennial<sup>9</sup> census, the governing body shall prepare a plan to be adopted by ordinance dividing the City into four (4) geographic election districts for the purpose of providing for the election of the City Council members. In preparing the plan, the governing body shall be guided by the criteria set forth in this section, along with other applicable requirements of law. The plan shall include a map and description of the City's new election districts.
- B. The governing body shall complete its redistricting work so that new election districts are utilized at the first regular municipal election following the completion of the decennial census.
- C. In preparation of its plan dividing the City into districts for the election of City Council members, the governing body shall apply the following criteria:

- (1) Districts shall be designed in conformity with the Federal Voting Rights Act<sup>10</sup> and in conformity with the principle of "one person – one vote" as required by law;
- (2) Districts shall consist of contiguous territory which shall be compact and convenient; and
- (3) Communities of interest, including those based on economic, geographic, or ethnic characteristics, shall be preserved within a single district to the extent reasonable and practical.

**Section 2.04. Compensation; Expenses.**

- A. The governing body shall determine the salary of the Mayor, City Council members, and Municipal Judge by ordinance subject to the limits of the New Mexico Constitution.
- B. The Mayor, City Council members, and the Municipal Judge shall receive their actual and necessary expenses incurred in the performance of their duties of office, subject to budgetary limitations and subject to the New Mexico Mileage and Per Diem Act.<sup>11</sup>

**Section 2.05. Vacancies; Forfeiture of Office.**

- A. Vacancies. The office of Mayor or City Councilor shall become vacant upon the member's death, resignation, removal from office, forfeiture of office, or for any other reason as authorized by this Charter or the laws of the State of New Mexico.
- B. Forfeiture of Office. The Mayor or any City Councilor shall be deemed to have automatically resigned from office if the Mayor or City Councilor lacks, loses or otherwise fails to possess, during the entire term of office, the qualifications for the office prescribed by this Charter or the laws or Constitution of the State of New Mexico.
- C. Effect of Redistricting. Notwithstanding the provisions of Subsection B of this section, no vacancy in the office of a City Councilor shall be caused by redistricting. All incumbent City Councilors shall be entitled to serve out their terms, even if redistricting causes a City Councilor to reside outside the district which that City Councilors was elected to represent.

**Section 2.06. Filling Vacancies.**

- A. A vacancy in the office of mayor shall be filled as follows:
  - (1) Within forty-five (45) days of the vacancy, the governing body shall appoint a qualified successor as defined in Section 2.02 who shall serve as Mayor until the next regular municipal election for that position.
- B. A vacancy in the office of City Councilor shall be filled as follows:
  - (1) Within forty-five (45) days of the vacancy, the Mayor shall appoint a qualified successor as defined in Section 2.02 to fill the vacancy, subject to the

confirmation of the governing body as provided in Section 3.02 of this charter, who shall serve until the next regular municipal election for that position.<sup>12</sup>

- C. Extraordinary Vacancies. In the event that all offices of the governing body are vacant due to death, disability, by operation of law, forfeiture of office, or combination thereof, the Governor will appoint an interim Mayor and City Council that will call a special election to be held no sooner than sixty (60) days, but not later than one hundred and twenty (120) days following the occurrence of that extraordinary vacancy.

#### **Section 2.07. Judge of Qualifications.**

- A. The governing body shall be the judge of the qualifications of its members and of the grounds for forfeiture of their office, except as provided in Chapter 10 of the New Mexico Statutes Annotated.
- B. The governing body shall have the power to set by ordinance additional standards of conduct for its members beyond those specified in this Charter, and may provide for such penalties as it deems appropriate, including forfeiture of office, so long as forfeiture of office is specifically and expressly authorized.
- C. In order to exercise these powers, the governing body shall have power to subpoena witnesses, administer oaths and require the production of evidence.
- D. Except as to proceedings brought pursuant to Chapter 10 of the New Mexico Statutes Annotated, a governing body member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one (1) or more newspapers of general circulation in the City at least one (1) week in advance of the hearing.

#### **Section 2.08. Investigations.**

The governing body may make investigations into the affairs of the City, or the conduct of any City department, office, agency, board, or any City activity, and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the Governing Body shall be a petty misdemeanor punishable by a fine established by City ordinance.

#### **Section 2.09. Governing Body Procedures.**

- A. Meetings. The governing body shall meet regularly at least once in every month at such times and places as the governing body may prescribe by ordinance. Special meetings may be held on the call of the Mayor or of two (2) or more members of the City Council. Notice of meetings shall be given as provided in a resolution to be adopted by the governing body pursuant to the New Mexico Open Meetings Act.<sup>13</sup> Except as allowed by the New Mexico Open Meetings Act, all meetings of the governing body shall be open.
- B. Rules and Minutes. The governing body shall determine its own rules and order of business and shall cause minutes to be kept of its proceedings. The minutes shall be a public record.

- C. Roll Call Votes. Voting on resolutions and ordinances shall be by roll call and the ayes and nays shall be recorded in the minutes.
- D. Voting. All actions and decisions of the governing body shall be by vote of a majority of all of the members present<sup>14</sup>, except as follows:
  - (1) Resolutions and ordinances shall be enacted by affirmative vote of a majority of all of the members of the governing body; and
  - (2) Any other matter required under this Charter or the Constitution or laws of the State of New Mexico, to be enacted by a vote other than a majority of the members present.
- E. Quorum. Three (3) members of the governing body shall constitute a quorum, unless there are one (1) or more vacancies on the governing Body; in which case, a quorum shall be a majority of the members of the governing body excluding those offices which are vacant. If a meeting of the governing body does not have a quorum, no action may be taken, except that the members attending but not constituting a quorum may adjourn the meeting to another time, and then take such action as may be necessary to cause the absent members to attend the meeting at the time it is set to reconvene.

#### **Section 2.10. Action Requiring an Ordinance**

- A. In addition to ordinances which are required by the laws of the State of New Mexico or by specific provision of this Charter<sup>15</sup>, the following matters shall be undertaken by ordinance of the governing body:
  - (1) Adopt or amend an administrative code or establish, alter, or abolish any City department, office or agency;
  - (2) Provide for a fine or other penalty, or establish a rule or regulation for violation of which a fine or other penalty is imposed;
  - (3) Levy taxes;
  - (4) Grant, renew or extend a franchise;
  - (5) Authorize the borrowing of money;
  - (6) Establish or change the rate charged for public utilities under City of Grants control; and
  - (7) Amend or repeal any ordinance previously adopted.
- B. All actions of the governing body, other than those required to be accomplished by ordinance, may be undertaken by motion or by resolution.

#### **Section 2.11. Emergency Ordinances.**



- A. To meet a public emergency affecting life, health, property or the public peace, the governing body may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, or regulate the rate charged by any public utility under City of Grants control for its services.
- B. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms, and stating the specific duration of the emergency.
- C. An emergency ordinance may be adopted with or without amendment, or rejected at the meeting at which it is introduced. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify.

**Section 2.12. Codes of Technical Regulations.**

- A. The governing body may adopt any standard code of technical regulations<sup>16</sup> by reference thereto in an adopting ordinance.
- B. A copy of each adopted code of technical regulations, as well as of the adopting ordinance, shall be made available by the City Clerk for distribution or for purchase at a reasonable price.

**Section 2.13. Authentication and Recording.**

Authentication and Recording. The City Clerk shall authenticate by signing, and shall record in full in a properly indexed book kept for that purpose, all ordinances and resolutions adopted by the governing Body. The City Clerk shall maintain a copy of the Charter together with all its attachments properly indexed.

**Article III  
MAYOR AND CITY MANAGER**

**Section 3.01. Mayor.**

- A. Mayor. The Mayor shall be a member of the governing body entitled to cast a vote only in the event of a tie among the City Councilors.
- B. The Mayor shall:
  - (1) Preside at meetings of the governing body;

- (2) Be the chief executive officer of the City and shall exercise all executive powers, except to the extent that those powers are vested with the City Manager by contract.
  - (3) Represent the City in intergovernmental relationships;
  - (4) Within 45 days after the close of the fiscal year, present an annual State of the City report, prepared in consultation with the City Manager, to the City Council. The report shall be made available for public review; and
  - (5) Perform such other duties and exercise such other powers as specified in this Charter, the City's ordinances and resolutions<sup>17</sup>, or by the governing body.
- C. The Mayor shall be recognized as head of the City government for ceremonial purposes, for purposes of responding to civil emergencies, and by the Governor for purposes of military law.
  - D. The Mayor is charged with the responsibility for implementing the Charter, monitoring compliance with the Charter, and remaining alert for any action which may be inconsistent or non-compliant with the provisions of the Charter.

**Section 3.02. Mayoral Power of Appointment; Process.**

- A. Whenever the Mayor is given the right to appoint a person to fill a vacancy in any elective office, to appoint a City Manager, or to appoint a person to any advisory body, subject to the confirmation of the Governing Body, then the provisions of this section shall govern the procedure by which such appointment and confirmation are undertaken.
- B. The Mayor shall notify the other members of the governing body of the name of the person appointed by the Mayor or begin an appointment process within thirty days of the vacancy.
- C. The Mayor's appointment shall be scheduled for the next regularly scheduled meeting of the governing body, although nothing herein shall prevent the governing body from considering the Mayor's appointment at a prior special meeting.
- D. Notice to the other members of the governing body shall be made at least seven (7) days prior to the next regularly scheduled meeting of the governing body.
- E. If the governing body fails to confirm the Mayor's appointment then the Mayor shall submit the name of another person within forty-five (45) days after the governing body's failure to confirm. The Mayor's subsequent appointment shall be considered by the governing body in the same manner as the original appointment was considered.
- F. The process of Mayoral appointment and governing body consideration shall continue until the governing body has confirmed an appointee of the Mayor to fill the position.

**Section 3.03. Mayor Pro Tem.**

- A. The City Councilors shall elect, from among themselves, a Mayor Pro Tem to assume the assigned role of Mayor during the temporary absence or disability of the Mayor. A Mayor Pro Tem shall be elected by the City Councilors no less often than at the organizational meeting following each regular municipal election. The City Councilors may change the Mayor Pro tem at their pleasure at any time. The Mayor shall have the power to break a tie vote on the election of the Mayor Pro Tem.
- B. A City Councilor serving as Mayor Pro Tem, in the temporary absence or disability of the Mayor, shall be entitled to vote only once on matters coming before the governing body and shall be entitled to cast a vote as a City Councilor and not to break a tie.

**Section 3.04. City Manager; Appointment; Qualifications; Compensation.**

- A. The Mayor shall appoint a City Manager subject to confirmation by a majority of all of the members of the governing body, per the procedure authorized in Section 3.02.
- B. The governing body shall enter into an employment contract with the City Manager which shall establish, among other matters, compensation and benefits, and which shall list the executive and administrative powers vested in the City Manager as specified in Section 3.07 of this Charter.
- C. The City Manager shall be appointed solely on the basis of administrative qualifications per the job description. The City Manager need not be a resident of the City or state at the time of appointment, but may reside outside the City while in office only with the express prior approval of the governing body.  
(Amended at Regular municipal election, March 1, 2016)
- D. The City manager shall not be appointed for any definite term and shall serve at the pleasure of the governing body as provided in this Charter.

**Section 3.05. City Manager; Suspension; Removal.**

- A. The City Manger may be suspended or removed by a majority vote of all of the members of the governing body. Action to remove the City manager may be initiated by the Mayor, or by motion of any City Councilor which is seconded by one (1) other City Councilor, at a meeting of the governing body.
- B. As the City Manager serves at the pleasure of the governing body, the City Manager may be suspended or removed by the governing body at any time.

**Section 3.06. Acting City Manager**

In the event of the temporary absence, disability, suspension, or other unavailability of the City Manager, within five (5) working days the Mayor shall appoint a City employee to serve as an acting City Manager for no more than thirty (30) consecutive days. The Mayor shall appoint, subject to Section 3.02, an acting City Manager for any vacancy or period of temporary absence, disability or suspension exceeding thirty (30) consecutive days, subject to confirmation by the governing body.

### **Section 3.07. Powers and Duties of the City Manager.**

The City Manager shall be the chief administrative officer of the City, in charge of the day-to-day administrative affairs of the city, and responsible to the governing body, as appropriate, for the administration of all City affairs placed in the Manager's charge by or under this Charter. The City manager shall:

- A. Direct and supervise the day-to-day administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law;
- B. Attend all meetings of the governing body. The City Manager shall have the right to take part in discussion but shall not be entitled to vote;
- C. Cause all ordinances, provisions of this Charter, and lawful actions of the governing body, which are subject to enforcement by the City Manager or by officers subject to the Manager's direction and supervision, to be faithfully executed;
- D. Prepare and submit the annual budget, capital program, and ICIP to the governing body as provided in this Charter<sup>18</sup>;
- E. Submit to the governing body, and make available to the public, a complete report on the finances and administrative activities of the City to coincide with the annual audit;
- F. Make such other reports as the Mayor or governing body may require concerning the operations of City departments, offices and agencies subject to the City Manager's direction and supervision;
- G. Keep the governing body fully advised as to the financial condition and future needs of the City;
- H. Make recommendations to the governing body concerning the affairs of the City;
- I. Provide staff support services for the governing body for approved initiatives.
- J. Be the Procurement Officer of the City; but the City Manager shall be entitled to delegate all or part of these functions to one or more City employees; and
- K. Perform such other duties as are specified in this Charter<sup>19</sup> or may be required by the governing body.
- L. The City Manager is charged with the responsibility for implementing the Charter, monitoring compliance with the Charter, and remaining alert for any action which may be inconsistent or non-compliant with the provisions of the Charter.

## **Article IV MUNICIPAL JUDGE**

**Section 4.01.            Creation; Power; Duties.**

- A.     Following the adoption of this Charter there shall be one Municipal Judge; however, in accordance with Section 35-14-4 NMSA 1978, additional judges may be elected if the governing body determines that the workload of the Municipal Court requires more than one (1) judge, and enacts an ordinance creating one (1) or more additional elective offices of Municipal Judge.
- B.     The Municipal Judge:
  - (1)    Shall constitute the judicial branch of the City government;
  - (2)    Shall be entitled to exercise all of the powers and duties of office as are authorized by the constitution and laws of the State of New Mexico;
  - (3)    Shall have jurisdiction over all offenses and complaints under the ordinances of the City; and
  - (4)    May issue subpoenas, warrants, and punishment for contempt.
- C.     The Municipal Judge is charged with the responsibility for implementing the Charter, monitoring compliance with the Charter, and remaining alert for any action which may be inconsistent or non-compliant with the provisions of the Charter.

**Section 4.02.            Qualifications.**

No person shall serve as Municipal Judge unless that person is a qualified elector and possesses the qualifications required by law. Other qualifications of the Municipal Judge and any bond required shall be established by ordinance.

**Section 4.03.            Term of Office and Salary.**

- A.     Term. The Municipal Judge shall be elected for a period of four (4) years. The Municipal Judge shall remain in office until the Municipal Judge's successor is elected and qualified.
- B.     Term Limitation. The Municipal Judge, after having served two (2) consecutive elected terms in the office of Municipal Judge, shall be ineligible to seek that office through election until one (1) full term has intervened.
- C.     Term Limitation and vacancy in Office.<sup>20</sup> An appointment to fill a vacancy in the office of Municipal Judge shall not be counted under Subsection B of this section and shall not prevent the appointee from:
  - (1)    seeking election to that same office for two additional subsequent consecutive terms;
  - (2)    being appointed to fill the same office after holding that office for the two immediate preceding terms.

- D. The salary of the Municipal Judge shall be established by ordinance.<sup>21</sup>

**Section 4.04. Removal; Forfeiture of Office.**

The Municipal Judge may be removed from office as provided under the laws of the State of New Mexico.<sup>22</sup>

**Section 4.05. Vacancy in the Office of Municipal Judge.**

- A. In the event of a temporary vacancy in the office of the Municipal Judge, the Municipal Judge shall appoint a qualified person to act as temporary or alternate Municipal Judge, subject to confirmation by the governing body. The process of appointing a temporary or alternate Municipal Judge shall be governed by Section 3.02B – E of this Charter, except that the Municipal Judge shall perform the appointive powers granted to the Mayor in Section 3.02B – E.
- B. If the Municipal Judge cannot or does not make the appointment, then the Mayor, according to Section 3.02, shall make the appointment subject to the confirmation by the governing body.
- C. In the event the Municipal Judge dies, resigns, no longer is qualified for office or is removed from office, the governing body shall declare the office vacant. The Mayor shall, subject to confirmation by the governing body as provided in Section 3.02, appoint a qualified successor to fill the vacancy, who shall serve until the next regular municipal election for the Municipal Judge.

## **Article V**

### **DIVISIONS, DEPARTMENTS, OFFICES, ADVISORY BODIES**

**Section 5.01. Departments; Creation; Supervision.**

- A. Creation of Divisions and Departments. The governing body shall, as part of the Personnel Ordinance, establish the administrative structure of the City, including the establishment of City divisions and departments and an organizational chart, and shall prescribe the functions of all divisions and departments.
- B. Direction by City Manager. All divisions and departments shall be under the direction and supervision of the City Manager as provided in this Charter, and shall be administered by the division and department director subject to the direction and supervision of the City Manager. With the approval of the governing body, the City Manager may serve as the director of one or more divisions or departments or may appoint one person as the director of two or more divisions or departments.
- C. Chain of Command. Except as otherwise provided in this Charter<sup>23</sup> the Mayor and the members of the City Council shall work through the City Manager regarding the day-to-day administrative affairs of the City, and shall refrain from directly giving orders to

division or department directors or their subordinates regarding such day-to-day administrative affairs.

**Section 5.02. Division and Department Directors; Hiring.**

- A. The City Manager shall appoint the directors of City departments and divisions.
- B. Directors of City divisions and departments shall be unclassified (salaried/exempt) employees<sup>24</sup> who shall serve at the pleasure of the City Manager.
- C. Neither the Mayor nor any City Councilor shall in any manner control or demand the hiring of any person by the City Manager, but the Mayor and each City Councilor may express their individual or collective views, and fully and freely discuss with the City Manager anything pertaining to a potential hiring.

**Section 5.03. Division and Department Directors; Discipline; Termination.**

- A. The City Manager may suspend directors of City departments and divisions, in writing, with or without pay, for not more than fourteen (14) days and may otherwise discipline directors of City departments and divisions, all in accordance with the City's Personnel Ordinance.<sup>25</sup> Such a suspension may be appealed to the governing body by the department or division director in accordance with the City's personnel ordinance. Such an appeal right shall not change the status of division and department directors from unclassified (salaried/exempt) employees.
- B. Directors of City divisions and departments shall be terminated by the City Manager.
- C. Neither the Mayor nor any City Councilor shall in any manner control or demand that the City Manager discipline or recommend the termination of any division or department director; but the Mayor and any City Councilor may express their individual or collective views, and fully and freely discuss with the City Manager anything pertaining to a proposed discipline or termination.

**Section 5.04. Personnel System.**

- A. The governing body shall adopt a Personnel Ordinance which is consistent with this Charter establishing the personnel policies, rules and procedures of the City. All appointments and promotions of City employees, other than division directors, department directors and those employees who are by this Charter or by ordinance designated as exempt employees, shall be made solely on the basis of merit in accordance with the Personnel Ordinance to be adopted by the governing body.
- B. The Personnel Ordinance shall:
  - (1) Set forth the standards and procedures by which the City Manager may suspend or otherwise discipline directors of City divisions and departments and eligible unclassified employees so long as the ordinance authorizes directors of City divisions and departments and eligible unclassified employees to appeal to the governing body such action by the City Manager.

- (2) Establish a merit system<sup>26</sup> governing personnel policies necessary to effective administration of the employees of the City's departments, offices and agencies, and must include but is not limited to classification and pay plans, examinations, force reduction, discipline, termination, working conditions, provisional and exempt appointments, in-service training, grievances, appeals, and relationships with employee organizations;
  - (3) Be consistent with all mandatory federal and state requirements;
  - (4) Authorize division directors, department directors or any other administrative officer of the City, subject to the City Manager's direction, approval, and supervision and subject to all applicable personnel regulations, to exercise the power to hire, fire and discipline subordinates in that officer's department, office or agency.
  - (5) Establish the administrative structure of the City including the establishment of City divisions and departments and an organizational chart, and prescribe the functions of all divisions and departments.<sup>27</sup>
- C. Neither the Mayor nor any City Councilor shall in any manner control or demand the appointment, discipline, or removal of any City employee who is other than an unclassified (salaried/exempt) employee of the City; and such matters shall be left in the hands of the City Manager and the City Manager's subordinates, except to the extent that the City's Personnel Ordinance may authorize appeals to the governing body.

#### **Section 5.05. City Attorney.**

- A. There shall be a City Attorney who shall serve as chief legal advisor to the governing body, City Manager, and all City divisions, departments, offices and agencies, and shall represent the City in legal proceedings, and shall perform any other duties prescribed by state law, by this Charter or by ordinance.<sup>28</sup>
- B. The City may contract with one or more outside legal counsel for the services of the City Attorney and for such other specialized legal services as may be required from time to time. If the City Attorney is a City employee, then the City Attorney shall be an unclassified (salaried/exempt) employee who shall be hired, terminated, disciplined, and supervised as a department director.<sup>29</sup>
- C. The City Attorney shall be an attorney in good standing, licensed to practice law in the State of New Mexico.
- D. The City Attorney shall be responsible to the City Manager regarding the day-to-day legal affairs of the City.
- E. The City Attorney is charged with the responsibility for implementing the Charter, monitoring compliance with the Charter, and remaining alert for any action which may be inconsistent or non-compliant with the provisions of the Charter.



**Section 5.06. City Clerk.**

- A. There shall be a City Clerk who shall serve as clerk to the governing body and City Manager and shall be responsible to the City Manager.
- B. The City Clerk shall give notice of governing body meetings to its members and the public, keep the minutes of its proceedings, keep the official records of the City, cause appropriate public notices to be given, and perform such other duties as are assigned by this Charter, by City ordinance, by the City Manager or by law.<sup>30</sup>
- C. The City Clerk shall be an unclassified salaried/exempt employee who shall be hired, terminated, disciplined, and supervised as a department director.<sup>31</sup>
- D. The City Clerk shall be responsible to the City Manager regarding the day-to-day affairs of the City.

**Section 5.07. Advisory Bodies.**

- A. The governing body may, by ordinance or resolution, establish advisory bodies<sup>32</sup> with such powers, purpose, scope and authority as is deemed appropriate by the governing body and as consistent with NMSA and/or City ordinances.<sup>33</sup>
- B. The governing body may establish advisory bodies as it determines to be appropriate and advantageous to the conduct of City government. Advisory bodies shall be established by ordinance when the advisory body is to function for a period greater than one (1) year. A resolution may be used for advisory bodies that will function for a period of one (1) year or less.
- C. Except as otherwise provided in this Charter, the Mayor shall appoint all members of an advisory body and fill vacancies thereon, subject to the confirmation of the governing body, as provided in Section 3.02 of this Charter. The Mayor shall appoint persons within forty-five (45) days of the formation of an advisory body, or within thirty (30) days of a vacancy thereon.
- D. Appointments to advisory bodies shall be made as follows:
  - (1) No member of the governing body nor any appointive officer or employee of the City shall be appointed to any City advisory body as a voting member.
  - (2) The governing body shall appoint employees of the City to an Employee Committee specifically to advise on personnel issues related to the Personnel Ordinance and Administrative Handbook.
- E. Except as otherwise provided by ordinance<sup>34</sup>, members of all advisory bodies shall serve at the pleasure of the governing body, and may be removed at any time.

**Section 5.08. Planning and Zoning Commission.<sup>35</sup>**

- A. The Planning and Zoning Commission of the City of Grants shall consist of five (5) members. The Commission shall select one of its members to act as chair.
- B. One (1) Commission member shall be appointed<sup>36</sup> from each of the four (4) council districts and they shall reside in their respective districts during their term. One (1) member shall be a resident of the City, appointed at-large.
- C. All appointments of Commission members shall be made within thirty (30) days of a vacancy, or the expiration of a Commission member's term of office.
- D. No vacancy in the office of any member of the Planning and Zoning Commission shall be caused by redistricting of City Council election districts. All Commission members shall be entitled to serve out their terms, unless otherwise removed pursuant to Subsection E of this section, even if redistricting causes a Commission member to reside outside the district which that Commission member represents.
- E. Members of the Planning and Zoning Commission may be removed at any time by the Governing Body. Upon removal, a vacancy shall be created which shall be filled as provided in this section.

**Article VI  
FINANCIAL PROCEDURES**

**Section 6.01. Fiscal Year; Treasurer.**

- A. The fiscal year of the City shall begin on the first day of July and end on the last day of June.
- B. The Director of Accounting and Finance shall function as the City Treasurer unless another person is designated by resolution.

**Section 6.02. Recommended Budget and Message; Recommended Capital Program.**

- A. The City Manager shall prepare a recommended budget for the ensuing fiscal year, an accompanying recommended budget message, and a recommended capital program and Infrastructure Capital Improvement Program (ICIP) according to the time schedule provided herein and as consistent with New Mexico Department of Finance and Administration-Local Government Division (NMDFA-LGD) Budget Policy.<sup>37</sup>
- B. The recommended budget, budget message, capital program, and ICIP shall be submitted to the governing body by the City Manager not later than the first regularly scheduled meeting in May.

### **Section 6.03. Contents.**

- A. The recommended budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter<sup>38</sup>, shall be in such form as the City Manager deems desirable or the governing body may require.
- B. The City Manager's recommended budget message shall explain the recommended budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues, together with the reasons for such changes, summarize the City's debt position and include such other material as the City Manager deems desirable.
- C. As consistent with the ICIP of the NMDFA-LGD, the recommended capital program shall include:
  - (1) A clear general summary of its contents;
  - (2) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for each;
  - (3) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
  - (4) Method of financing upon which each capital expenditure is to be based; and
  - (5) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.
- D. Yearly Revision. The requirements set forth in Subsection C shall be revised and extended each year with regard to capital improvements still pending, or in the process of construction or acquisition.

### **Section 6.04. Governing Body Action on Budget and Capital Program.**

- A. Notice and Hearing. The governing body shall cause to be published a notice stating:
  - (1) The times and places where copies of the budget, budget message, capital program, and ICIP are available for inspection by the public, and
  - (2) the time and place, not less than two (2) weeks after such publication, for a public hearing on the budget, the capital program, and ICIP.
- B. Amendment before Adoption. After the public hearing, the governing body may adopt the budget, capital program, and ICIP with or without amendment. In amending the

budget, capital program or ICIP it may add or increase programs or amounts; it may delete or decrease any programs or amounts, except expenditures required by law for debt service or for an estimated cash deficit; provided that no amendment shall increase the total authorized expenditures to an amount greater than total estimated income.

- C. Adoption. The governing body shall adopt the budget, capital program and ICIP by separate resolutions.
- D. If the budget is not adopted by the beginning of the fiscal year, then the amounts appropriated for current operations for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly until the governing body adopts a budget. Nothing herein shall preclude the City from meeting all bond payments and debt service when due.

**Section 6.05. Appropriation and Revenue Resolutions; Limitation on Taxing Power.**

- A. To implement the adopted budget, the governing body shall adopt, prior to the beginning of the ensuing fiscal year:
  - (1) An appropriation resolution making appropriations by department or major organizational unit;
  - (2) A tax levy resolution authorizing the property tax levy or levies, subject to limits on such taxing authority as are imposed by the laws of the State of New Mexico; and
  - (3) Any other resolutions or ordinances, as appropriate, required to authorize new revenues, or to amend the rates or other features of existing taxes or other revenue sources.
- B. Nothing herein shall be interpreted as granting any additional taxing authority to the City beyond that which is authorized by law.

**Section 6.06. Amendments After Adoption.**

- A. Supplemental Appropriations. If, during the fiscal year, the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the governing body, by resolution, may make supplemental appropriations for the year up to the amount of such excess, in accordance with the laws of the State of New Mexico.
- B. Reduction of Appropriations. If, at any time during the fiscal year, it appears probable to the City Manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the City Manager shall report to the governing body without delay, indicating the estimated amount of the deficit, any remedial action taken by the City Manager and recommendations as to any other steps to be taken. The governing body shall then take

such further action as it deems necessary to prevent or reduce any deficit, and for that purpose it may, by resolution, reduce one or more appropriations.

- C. **Transfer of Appropriations.** At any time during the fiscal year, the governing body may, by resolution, transfer part or all of the unencumbered appropriation balance from one department or major organizational unit to the appropriation for other departments or major organizational units. The City Manager may transfer part or all of any unencumbered appropriation balances among programs within a department or organizational unit, and shall report such transfers to the governing body in writing in a timely manner.
- D. **Limitation; Effective Date.** No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated, or by more than the amount of the unencumbered balance thereof. The supplemental appropriations and reductions, or transfer of appropriations authorized by this section, may be made effective immediately upon adoption.

#### **Section 6.07. Lapse of Appropriations**

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year, to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

#### **Section 6.08. Administration of the Budget**

The governing body shall provide, by ordinance, the procedures for administering the budget.

#### **Section 6.09. Prohibition of Overspending of Appropriations.**

- A. No payment shall be made or obligation incurred against any allotment or appropriation, except in accordance with appropriations duly made, and unless the City Manager or the City Manager's designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation, and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable.
- B. Any authorization of payment or incurring of an obligation in violation of the provisions of this Charter shall be void, and any payment so made shall be illegal.
- C. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment, or incurred such obligation. Such officer may also be liable to the City for any amount so paid.
- D. Except where prohibited by law, however, nothing in this Charter shall be construed to prevent the making or authorizing of payments, or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, or the making of

any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by ordinance.

**Section 6.10. Independent Audit.**

- A. The governing body shall provide for an independent annual audit of all City accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The report of the annual audit shall be made directly by the auditor(s) to the governing body.
- B. The governing body may, subject to the requirements of the New Mexico Procurement Code and Section 2.2.2 of the New Mexico Administrative Code (Regulations on the Audits of Governmental Entities – State Auditor Ruling) hire a certified public accountant or firm.

**Section 6.11. Investments of Funds.**

The governing body shall adopt by ordinance a policy and procedure regarding the deposit and investment of City funds which protects such funds and earns as high a rate of interest as is practical, reasonable and prudent. The City may deposit its funds with eligible institutions located within or without the City.

## **Article VII ELECTIONS**

**Section 7.01. City Elections.**

- A. The New Mexico Municipal Election Code shall apply to and govern elections of the City of Grants, except to the extent that the Municipal Election Code is inconsistent with the provisions of this Charter, in which case the Charter shall govern.<sup>39</sup>
- B. The regular municipal election shall be held on the first Tuesday in March of each even-numbered year.
- C. Candidates for all municipal elective offices<sup>40</sup> shall run for office without any political party designation, and no references to any slate of candidates shall be made on any ballots.
- D. For the conduct of City elections, for the prevention of fraud in such elections, and for such other purposes as may be determined by the governing body, the governing body shall adopt ordinances consistent with this Charter. Such ordinances shall include a policy concerning campaign practices, candidate expenses, contribution reports, and campaign ethics.<sup>41</sup>

**Section 7.02. General Provisions Governing Initiative, Referendum, and Recall<sup>42</sup>**

- A. The powers of initiative, referendum and recall are hereby reserved by the voters of the city.
- B. Except as otherwise provided herein<sup>43</sup>, the provisions of the New Mexico Municipal Election Code and Section 3-1-5 NMSA 1978 as they currently exist or may be hereafter amended or superseded shall govern the exercise of the powers of initiative, referendum, and recall under this Charter.
- C. Initiative, referendum and recall shall commence by the filing of a petition with the City Clerk which complies with the following requirements:
  - (1) The form of the proposed petition shall be submitted to the City Clerk prior to its circulation in the City for signature.
  - (2) The City Clerk shall indicate in writing on a proposed petition that it is approved as to form if:
    - (a) the petition contains a heading which states the purpose of the petition, whether for the purpose of initiative or referendum or recall.
    - (b) the initiative petition sets forth the full text of the proposed ordinance; or the referendum petition sets forth in full the title of the ordinance which is the subject of the referendum, the ordinance number, if any, and a brief description of the ordinance; or the recall petition sets forth the name of the elected City official who is the subject of the recall.
    - (c) the petition contains a place for the person signing the petition to write the date, name (printed), address, and signature; and
    - (d) the petition contains a statement that any person knowingly providing, or causing to be provided, any false information on a petition, forging a signature or signing a petition when that person knows he or she is not a qualified elector in the City of Grants, is guilty of a fourth degree felony.<sup>44</sup>
- D. If a particular proposed petition is not submitted to the City Clerk prior to circulation, or if such a proposed petition is not approved as to form by the City Clerk, then the City Clerk shall not accept that petition for filing.
- E. The signed initiative or recall petition shall be filed with the City Clerk not more than sixty (60) consecutive days following the date upon which the City Clerk approved the petition as to form; or the signed referendum petition shall be filed with the City Clerk not more than sixty (60) consecutive days following the date at which the governing body voted to approve the ordinance.

- F. One or more affidavits of circulation shall be submitted by a qualified elector of the City of Grants along with all submitted petition sheets. The affidavit of circulation shall state under oath that the affiant personally circulated the appended petition sheet(s), that the appended petition sheets contain a stated number of signatures, that all of the signatures on the appended petition sheets were placed thereon in the affiant's presence, and that to the best of the affiant's information and belief, the affiant believes them to be the genuine signatures of the persons whose names are on the petition sheets.
- G. Upon the filing of an initiative, referendum or recall petition which has been previously approved as to form, the City Clerk shall verify the petition pursuant to Section 3-1-5 NMSA 1978, and the City Clerk and governing body shall perform the duties otherwise required in Section 3-1-5 NMSA 1978, except to the extent that such provisions are inconsistent with this section of the Charter.

### **Section 7.03. Special Provisions Governing Initiative.**

In addition to the general provisions set forth in Section 7.02 above, the following special provisions shall govern the right of initiative:

- A. The qualified electors of the City shall have the power to propose ordinances to the governing body.
- B. The power of initiative shall not extend to: the budget; the capital program and ICIP; any ordinance relating to appropriation of money; the levy of taxes, unless a referendum is specifically authorized by state law; salaries of City officers or employees; or ordinances authorizing bonds or other obligations where such ordinances, bonds or other obligations previously have been approved at a City election.<sup>45</sup>
- C. The initiative petition shall be signed by not less than twenty percent (20%) of the qualified electors residing in each of the four City Council election districts of the City of Grants.
- D. Upon the filing of an initiative petition which has been certified as complying with the requirements of the Charter, the initiated ordinance shall be proposed to the governing body for enactment within thirty (30) days of the date of filing the petition.
- E. If the governing body fails to act, acts adversely, or amends the initiated ordinance, then the governing body shall enact an election resolution calling for a special election, pursuant to the special election calendar and procedures of the New Mexico Municipal Election Code, for the purpose of submitting the initiated ordinance to the electorate.



- F. The ballot shall contain the initiated ordinance and the initiated ordinance as amended, if the governing body amends the initiated ordinance. After each version of the initiated ordinance there shall be printed the words:

“for” and  
“against”

with spaces for crosses after each word.

- G. The measure receiving a majority of the votes cast in its favor is adopted. If each measure receives a majority of the votes cast in its favor, the measure receiving the greatest number of votes cast in its favor is adopted.

#### **Section 7.04. Special Provisions Governing Referendum**

In addition to the general provisions set forth in Section 7.02 above, the following special provisions shall govern the right of referendum:

- A. The qualified electors of the City shall have the power to require reconsideration by the governing body of any adopted ordinance, except as prohibited by law or this Charter.
- B. The power of referendum shall not extend to: the budget; the capital program; any ordinance relating to appropriation of money; the levy of taxes, unless a referendum is specifically authorized by state law; salaries of City officers or employees; zone map amendments or ordinances authorizing bonds or other obligations, where such ordinances, bonds or other obligations previously have been approved at a City election or are revenue bonds.
- C. Upon the filing of a referendum petition which has been certified as complying with the requirements of the Charter, the ordinance in question shall be presented to the governing body for the purpose of determining whether the governing body will repeal the ordinance. If the governing body fails to repeal the ordinance in question, then the governing body shall enact an election resolution calling for a special election, pursuant to the special election calendar and procedures of the New Mexico Municipal Election Code, for the purpose of submitting the ordinance to the electorate.
- D. The ballot shall contain the text of the ordinance or resolution. Below the text shall be the words:

“for” and  
“against”

with spaces for crosses after each word.

- E. If a majority of the votes cast are in favor of the measure, then it shall take effect immediately. If a majority of the votes cast are against the measure, it shall not take effect.

- F. If an ordinance eligible for referendum is an emergency measure, it shall go into effect immediately; but it shall be subject to repeal by an adverse majority at a referendum election. Any ordinance subject to referendum other than an emergency ordinance shall become effective as provided by law. Upon certification of a referendum petition, such an ordinance shall be suspended until it is repealed by the governing body, rejected at an election, or approved at an election.

## **Section 7.05                      Special Provisions Governing Recall.**

In addition to the general provisions set forth in Section 7.02 above, the following special provisions shall govern the right of recall:

- A. All city officials holding elective office are subject to recall, including persons who have been appointed to fill a vacancy in an elected office.
- B. If the elected City official sought to be recalled is a City Councilor, then the petition shall:
  - (1) be signed only by qualified electors who are registered to vote within the district represented by the City Councilor proposed to be recalled, and
  - (2) be signed by not less than twenty percent (20%) of the qualified electors in the district of the City Councilor proposed to be recalled.
- C. If the elected City official sought to be recalled is the Mayor or Municipal Judge, then the petition shall be signed by not less than ten percent (10%) of the qualified electors residing in each of the four City Council election districts with a total aggregate number of signatures on the recall petition of not less than twenty percent (20%) of all of the qualified electors of the City of Grants.
- D. Upon the filing of a recall petition which has been certified as complying with the requirements of the Charter, the governing body shall enact an election resolution calling for a special election.
- E. If the elected City official sought to be recalled is a City Councilor, then the special recall election shall be held only in the election district represented by that City Councilor.
- F. At any recall election, the official holding office shall be recalled only if more than sixty-five (65%) of the total number of votes cast at the recall election vote in favor of recall.
- G. An official who is recalled is not eligible to be reelected or reappointed to that office until the term for which he or she was originally elected or appointed has expired.
- H. If a recall election results in a failure to secure the votes necessary to recall, the official who is the subject of the recall election shall not again be subject to recall during the remainder of that official's term of office.

## **Article VIII**

### **CONFLICT OF INTEREST; ETHICS**

#### **Section 8.01. Conflict of Interest.**

- A. Definitions. The following definitions shall be applicable when the following defined terms are used in this section:
- (1) "Advisory Body member" means board or commission member.
  - (2) "Business" means a corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business.
  - (3) "City employee" means the City Manager, all department directors, and any other person who is not an elected official of the City and who receives compensation in the form of a salary from the City.
  - (4) "Controlling interest" means an interest which is greater than twenty percent (20%).
  - (5) "Contract" means an agreement to purchase or obtain services, construction or items of personal property, with a value of five hundred dollars (\$500) or more, but "contract" shall not include a contract of employment with the City.
  - (6) "Employment" means rendering of services for compensation in the form of salary as an employee.
  - (7) "Financial interest" means an interest held by a person, that person's spouse or minor children, which is:
    - (a) any ownership interest in a business; or
    - (b) any employment or prospective employment for which negotiations have already begun.
  - (8) "Official act" means an official decision, recommendation, approval, disapproval or other action which involves the use of discretionary authority by a member of the governing body or an advisory body.
- B. Disclosure and Voting. In addition to any other applicable provision of law, the provisions of this section shall govern disclosure and voting by the Mayor and City Councilors as follows:
- (1) The Mayor or any City Councilor who has a financial interest in the outcome of any policy, decision, or determination before the governing body, shall disclose to the other members of the governing body the nature of the financial interest,

and the disclosure shall be recorded by the Clerk as part of the minutes of the meeting at which the disclosure is made.

- (2) No member of the governing body shall vote on any policy, decision or determination in which that governing body member has a financial interest.
- C. Disqualification. All governing body members, City employees and advisory body members shall disqualify themselves from participating in any official act directly affecting a business in which that employee or advisory body member has a financial interest. The affected City employee, advisory body member shall disclose to the members of the governing body the nature of the financial interest, and the disclosure shall be recorded by the Clerk as part of the minutes of the meeting at which the disclosure is made.
- D. Exception to disqualification. The governing body may grant an exception from the requirements of subsection 8.01.C by enacting an ordinance at the beginning of each fiscal year disclosing all conflicts of interest that relate to the day-to-day business of the City and allowing the governing body to determine whether or not a governing body member, City employee or advisory body member may participate in official acts on matters related to routine purchases and routine day-to-day City business.
- E. Gifts. No City elected official, City employee, or advisory body member shall request, receive or accept a gift or loan, or request, receive or accept a gift on behalf of any other person, if:
- (1) It tends to influence the official, employee, or advisory body member in the discharge of any official act;
  - (2) The official, employee or advisory body member has, within the prior two (2) years, engaged in any official act directly affecting the donor or lender; or
  - (3) The official, employee, or advisory body member knows the donor or lender will be directly affected by a future official act of the official, employee or advisory body member.
- F. Gifts; Exception. The prohibitions of Subsection D of this section shall not apply to:
- (1) An occasional non-pecuniary<sup>46</sup> gift insignificant in value;
  - (2) An award publicly presented in recognition of public service;
  - (3) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the state to engage in the business of making loans; or
  - (4) A political campaign contribution, provided that such a gift or loan is actually used in a political campaign.

- G. Contracts. The City shall not enter into any contract with any City elected official or City employee, with any former City elected official or City employee who was a City elected official or City employee during the immediate prior twelve (12) months, or with a business in which such current or former City elected official or employee has a financial interest, unless:
- (1) The existence of any financial interest is disclosed; and
  - (2) The contract is entered into after public notice and competitive bidding or competitive sealed proposals in which price is a factor are complied with.
- H. Enforcement. The governing body shall adopt an ordinance providing for enforcement of this section of the Charter.<sup>47</sup>

**Section 8.02. Holding Other Office.**

- A. Except as authorized by state law, no elected officer of the City shall hold any other elected public office during the term for which the official was elected.
- B. No elected officer of the City shall hold any other City office or be employed by the City during the term for which the official was elected.
- C. No former Mayor or City Councilor shall be employed by the City until one (1) year after the expiration of the term for which the member was elected.
- D. Nothing in this section shall be construed to prohibit the governing body from selecting any current or former Mayor or City Councilor to represent the City before any other governmental entity.

**Section 8.03. Political Activity.**

- A. No person shall engage in fund raising or campaigning in City offices regarding any ballot measure at a City election, or a campaign for City elective office.
- B. No employee shall be disciplined or dismissed from City employment for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political group, organization or campaign for municipal office; however, nothing herein shall prohibit or limit voluntary contributions to municipal election campaigns.
- C. Any City employee who becomes by declaration of candidacy a candidate for municipal elective office of the City of Grants shall take time off not later than fourteen (14) days prior to the date of the municipal election, according to City Personnel Policy and Procedure. For this purpose, the City employee may use accrued vacation time or take leave of absence without pay or may resign.
- D. No employee of the City shall engage in any campaigning, fund raising, or other political activity involving any municipal election while on duty.

- E. Enforcement. The governing body shall adopt an ordinance providing for enforcement of this section of the Charter.<sup>48</sup>

## **Article IX COMPLIANCE**

### **Section 9.01. Charter Implementation and Compliance.**

The City Manager, the City Attorney, and the elected officials are all charged with the responsibility for implementing the Charter, monitoring compliance with the Charter, and remaining alert for any action which may be inconsistent or non-compliant with the provisions of the Charter.

### **Section 9.02. Citizen Monitoring of Charter Compliance.**

- A. All regular meetings of the City Council shall provide a forum for citizens to come forward and address the governing body regarding any issue related to non-compliance with or violation of the Charter.
- B. The City Council shall include on each and every regular meeting agenda an action item for public comment and discussion of Charter compliance, usually following the general public comment period.
- C. The following provisions shall govern the right of citizens to address the Council on issues related to Charter compliance:
- (1) During any regular meeting of the City Council, public comment on Charter compliance shall be limited to five (5) speakers.
  - (2) Individual speakers shall be limited to two (2) minutes per speaker, but the City Council may extend this time limit.
  - (3) Speakers shall reference and the minutes shall state the specific article, section, and sub-section of the Charter to which the alleged compliance issue pertains.
- D. The City Clerk will notify the public two times per year that there is a City Charter, and where it can be accessed.  
(Adopted at Regular Municipal election, March 1, 2016)

### **Section 9.03. Council Action.**

- A. Legal Opinion. The City attorney has authority to advise members of the governing body regarding the propriety of citizen comments regarding Charter compliance. Governing body members may request an immediate legal opinion from the City attorney upon presentation of citizen comments or no later than the next regularly scheduled meeting of the City Council.

- B. Actions Regarding Citizen Charter Compliance Issues. The City Council, upon receipt of a citizen charter compliance complaint pursuant to Section 9.02 and receipt of any necessary legal opinion regarding such complaint pursuant to section 9.03.A, may i) take no action on the matter; ii) take action to deny or reject any complaint; or iii) take action to determine that a violation of the Charter has occurred. In the event that the City Council determines that a violation of the Charter has occurred, the council may, pursuant to law, i) reconsider the action; ii) nullify the action; or iii) correct the action.

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<sup>1</sup> Article X, Section 6, of the New Mexico Constitution and the Municipal Charter Act, currently codified at Sections 3-15-1 through 3-15-16 NMSA 1978.

<sup>2</sup> "Devolution of powers" means the transfer of powers to local authorities by a central government.

<sup>3</sup> The "City" here refers to Mayor, Council and City Manager.

<sup>4</sup> Sections 11-1-1 through 11-1-7 NMSA 1978, see Index #1.

<sup>5</sup> The Municipal Code is all of the Articles (1 through 64) of Chapter 3 of the NMSA. The Municipal Charter Act is Article 15 of Chapter 3.

<sup>6</sup> Requirements for a candidate are discussed in Article III, Section 8-28, NMSA 1978. In general, a candidate must meet three basic requirements: (1) have no felony conviction or proof that the candidate's elective franchise has been restored; (2) reside in and be registered to vote in the municipal election district from which the individual seeks election; and (3) comply with the requirements for filing as spelled out in Article 3, Section 3-8-27 NMSA 1978. See also Charter Sections 2.02 B, 7.01 A and C.

<sup>7</sup> Term limits such as those contained in this section were declared unconstitutional by the New Mexico Court of Appeals in Cottrell v. Santillanes, 120 N.M. 367 (Ct. App. 1995). The New Mexico Supreme Court denied certiorari, and therefore the New Mexico Court of Appeals decision declaring this section unconstitutional stands. The NM Constitution, Article X, Sec 4, C. states that for County and Municipalities, the term of office shall be provided for in the charter.

<sup>8</sup> See also discussions of vacancies in office at Section 2.05 and Section 2.06.

<sup>9</sup> "Decennial " means occurring or being done every 10 years.

<sup>10</sup> Federal Voting Rights Act of 1965 codified at 42 U.S.C. 1971 *et seq.* (See Index #2.)

<sup>11</sup> NMSA 1978, Section 10-8-5(A) and Section 9-6-5(E). See Index #3.

<sup>12</sup> See also Section 3.01 specifying that the Mayor casts a vote only in the event of a tie among the City Councilors.

<sup>13</sup> The Open Meetings Act is cited as 10-15-1 through 10-15-4, NMSA 1978. (See Index #4)

<sup>14</sup> See also Section 3.01.

<sup>15</sup> And also subject to the limitations and restrictions stated in the Constitution of the State of New Mexico, Article X, Section 6.D, and in Section 3-15-7, NMSA 1978.

<sup>16</sup> The meaning of a "code of technical regulations" in this context is a building, construction, fire or similar uniform code of general applicability. These include but are not limited to ordinances: #193-#197 ( Fire, Plumbing, Electrical, Building, Housing) as may be amended.

<sup>17</sup> Relevant City ordinances include, but are not limited to: Nos. 1, 70, 165, 186, 228, 245, 315, 320, 417, 1003-1005, 95-102, as may be amended.

<sup>18</sup> See also Sections 6.02 and 6.05.

<sup>19</sup> Other duties of the City Manager are specified in Charter sections 5.01-5.04, 6.02, 6.06, and 9.01.

<sup>20</sup> See also Section 4.05.

<sup>21</sup> See ordinance #376, 02-1137.

<sup>22</sup> Section 3-10-7 NMSA 1978.

<sup>23</sup> See Sections 5.05 and 5.06

<sup>24</sup> "Unclassified (salaried/exempt)" is defined in the Personnel Ordinance, #1000, Chapter 1, page 1.

- 25 See Index #5, Personnel ordinance #1000. See also ordinances #95-1012, 96-1001, 186, 99-1131.  
The Personnel Ordinance also includes an Administrative Handbook which was adopted at the same  
time as the ordinance.
- 26 For further discussion of the merit system of employment see Personnel Ordinance, Section 2.07.
- 27 See Section 5.01.A
- 28 See Charter Section 9.01 and ordinances #95-1012, 96-1001, and 99-1131.
- 29 See Personnel Ordinance, Chapter 7, pages 24-25.
- 30 See Charter Sections 7.01 & 7.02, ordinances #1 and 186.
- 31 See Personnel Ordinance, Chapter 7, pages 24-25.
- 32 Advisory bodies may be either boards or commissions.
- 33 See City ordinances #70, 165, 315, 320, 417, 1003-1005, 98-1019.
- 34 See City ordinances #98-1019, ~~320~~, 14-1204, 165.
- 35 See Planning and Zoning Ordinance #315.
- 36 See Section 3.02 for appointment process.
- 37 The New Mexico Department of Finance and Administration-Local Government Division manual  
contains all state budget policies. This manual can be found in the office of the City Manager.
- 38 See Charter Sections 6.02 A.
- 39 See Index #6 for Municipal Election Code (Chapter 3, Articles 8 and 9 NMSA 1978).
- 40 "All municipal elective offices" include the mayor, four city councilors, and the municipal judge.
- 41 See ordinances #~~353~~, 397, 324.
- 42 Initiative is the right and procedure enabling voters by petition to propose a law and secure its  
submission to the electorate for approval (see Section 7.03); referendum is the practice of submitting  
to popular vote a measure approved or proposed by the City Council (see Section 7.04); and recall is  
the right and procedure by which an official may be removed by vote of the people (see Section  
7.05).
- 43 See Charter Sections #7.02, 7.03, 7.04, 7.05.
- 44 Section 3-1-5 NMSA.
- 45 Public input into these processes is obtained through a public hearing process where citizens may  
voice their concerns; the public hearing process is governed by the DFA Budget and Finance Manual.
- 46 Non-pecuniary means "not consisting of or relating to money".
- 47 See City ordinances #324, 372.
- 48 See City ordinances #324, 372.